

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KAREEM HASSAN MILHOUSE,	:	
	:	
Petitioner	:	CIVIL NO. 1:16-CV-01348
	:	
vs.	:	
	:	
WARDEN DAVID EBBERT,	:	(Judge Rambo)
	:	
Respondent	:	

MEMORANDUM

Background

On July 1, 2016, Kareem Hassan Milhouse, a prisoner confined at the United States Penitentiary, Lewisburg, Pennsylvania, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1.) Milhouse's petition was scant in detail. The court could discern, however, from the petition and attachments thereto that he was challenging the outcome of seven prison disciplinary proceedings where he was found guilty of engaging in lewd and disruptive behavior by a Discipline Hearing Officer ("DHO") and received sanctions, including the loss of good conduct time.¹ The

1. The first incident report charged Milhouse with Prohibited Act 205, Engaging in Sexual Acts. Exhibits attached by Milhouse to the petition revealed that he was charged with masturbating in front of a

(continued...)

court reviewed the petition pursuant to Rule 4 of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254, as made applicable to § 2241 cases by Rule 1 thereof² and dismissed it as untimely filed. The reasons for the dismissal were set forth in a 21-page memorandum issued on August 12, 2016, and the court incorporates by reference herein the reasoning set forth in that memorandum. In summary the court determined that

1. (...continued)
psychologist and that he refused to attend the disciplinary hearing. With respect to the second and third incident reports Milhouse was also charged with engaging in sexual acts. The fourth incident report charged Milhouse with Prohibited Act 299, Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. A document attached to the petition by Milhouse revealed that he was "observed at pill line w[ith] [his] hands down his pants moving them." The fifth, sixth and seventh incident reports charged Milhouse with engaging sexual acts. The documents attached to the petition by Milhouse revealed that he was "found to have been stroking his penis knowing a staff member was present at his cell door."

2. Rule 4 states in pertinent part that "[t]he clerk must promptly forward the petition to a judge under the court's assignment procedure, and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition"

Milhouse's petition involving seven misconduct reports was subject to dismissal pursuant to the 1-year statute of limitations because the administrative proceedings were concluded more than 1 year prior to Milhouse filing the habeas petition on July 1, 2016. With respect to the most recent incident reports, i.e., the fifth, sixth and seventh incident reports, the court specifically stated that Milhouse's petition as it related to them "failed to (1) allege that he filed his appeal to the Central Office within the time mandated by 28 C.F.R. § 542.18 and (2) file the present petition within 1-year of the date that his administrative remedies would have been exhausted if in fact he pursued those remedies in accordance with the regulations." (Doc. 4, at 20.)

On August 26, 2016, Milhouse filed a Rule 60(b)(6) motion for reconsideration (Doc. 7) and a brief in support thereof. (Doc. 8.) Milhouse motion focuses on the fifth, sixth and seventh incident reports. The documents attached to Milhouse's petition revealed that with respect to the seventh incident report Milhouse admitted at the DHO hearing that he was guilty.

Consequently, with respect to the motion for reconsideration, the court will only address the arguments raised by Milhouse as they relate to the fifth and sixth incident reports. For the reasons set forth below Milhouse's motion for reconsideration will be denied.

Discussion

A motion for reconsideration filed pursuant to Federal Rule of Civil Procedure 60(b) "allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances including fraud, mistake, and newly discovered evidence." Gonzalez v. Crosby, 545 U.S. 524, 528 (2005). Rule 60(b) motions are addressed to the sound discretion of the trial court, and are guided by accepted legal principles applied in light of all relevant circumstances. See Pierce Ass'n., Inc. v. Nemours Found., 865 F.2d 530, 548 (3d Cir. 1988).

Here, Milhouse filed his motion under Rule 60(b)(6), the "catch-all" provision of Rule 60(b). Rule 60(b)(6) permits a party to seek reconsideration for

"any other reason [other than the specific circumstances set out in Rules 60(b)(1)-(5)] that justifies relief" from the operation of the judgment. See Fed. R. Civ. P. 60(b)(6); Gonzalez, 545 U.S. at 529. The Third Circuit has consistently held that Rule 60(b)(6) provides "extraordinary relief" that is only available in "exceptional circumstances." Coltec Indus., Inc. v. Hobgood, 280 F.3d 262, 273 (3d Cir. 2002).

It well-established that a motion for reconsideration under Rule 60(b)(6) is a device of limited utility. It "must be fully substantiated by adequate proof and its exceptional character must be clearly established." FDIC v. Alker, 234 F.2d 113, 116-17 (3d Cir.1956). To the extent a moving party seeks to relitigate the court's prior conclusions, Rule 60(b) is not an appropriate vehicle. "[C]ourts must be guided by 'the well established principle that a motion under Rule 60(b) may not be used as a substitute for appeal.'" It follows therefore that it is improper to grant relief under Rule 60(b)(6) if the aggrieved party could have reasonably sought the same relief by means of appeal."

Martinez-McBean v. Gov't of Virgin Islands, 562 F.2d 908, 911 (3d Cir.1977) (citations omitted).

Applying the standards used when a party seeks to reopen his case under Rule 60(b)(6), the court concludes that Milhouse has failed to demonstrate the existence of extraordinary circumstances warranting relief.

Milhouse contends he received responses from the Central Office with respect to the fifth and sixth incident reports and those responses which he attached to his motion for reconsideration are dated December 9, 2015. Consequently, he argues that the habeas petition filed on July 1, 2016, was filed within the 1-year statute of limitations. However, Milhouse previously claimed that the decisions with respect to the fifth and sixth incident reports were rendered by the DHO on or about March 13, 2014; he appealed the decisions of the DHO to the Mid-Atlantic Regional Office on April 15, 2014; the Regional Office denied his appeals in June and August, 2014; and he appealed to the Central Office on an unspecified date. Under the BOP regulations Milhouse had 30 calendar days to file an appeal from the decision

of the Regional Office to the Central Office. 28 C.F.R. § 542.15(a). Milhouse represented that the Regional Office decided his appeals in June and August, 2014. Taking an outer date of August 31, 2014, Milhouse had until September 30, 2014, to file an appeal to the Central Office and the Central Office had at most 60 days to decide the appeal. 28 C.F.R. § 542.18. If the Central Office did not act within the 60 days the failure to act is considered a denial. 60 days from September 30, 2014, was November 29, 2014. Consequently, Milhouse had 1 year from that date to file a habeas petition with this court, i.e., November 29, 2015. Instead of filing his petition on that date, as stated previously he untimely filed the petition on July 1, 2016, and his motion for reconsideration has no merit.

An appropriate order will be entered.

s/Sylvia Rambo
SYLVIA H. RAMBO
United States District Judge

Date: December 5, 2016